97-1903

DOCKET NO: _____

FILED
MAY 0 1 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNITED STATES SUPREME COURT

OCTOBER, 1998

ALANA SUDWISHER

VERSUS

ESTATE OF PAUL C. HOFFPAUIR, ET AL.

ON WRIT OF CERTIORARI

BY THE LOUISIANA STATE SUPREME COURT

BRIEF IN OPPOSITION

TO PETITION FOR A WRIT OF CERTIORARI

JOHN F. CRATON
ATTORNEY FOR ESTATE OF PAUL C.
HOFFPAUIR, ET AL
P. O. DRAWER 1305
CROWLEY, LOUISIANA 70527-1305
TELEPHONE (318) 785-1000

TABLE OF AUTHORITIES

I. CASES:

A. FEDERAL

1. *Trimble v. Gordon*, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977)

2. *Mathews vs. Lucas*, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976)

3. *Pickett v. Brown*, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983)

4. *Lalli v. Lalli*, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed. 2d 503 (1978)

5. *Succession of Lyons*, 452 So.2d 1161 (La. 1984)

6. *Nordlinger v. Hahn*, 112 S. Ct. 2326, 505 U.S. 1, 120 L.Ed. 2d 1, (1991)

7. *F. S. Royster Guano Company v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L. Ed. 989 (1920)

8. *McGowan v. Maryland*, 366 U.S. 420, 425–426, 81 S.Ct. 1101, 1105, 6 L. Ed. 2d 393 (1961)

9. *Clark v. Jeter*, 486 U.S. 456, 108 S.Ct. 1910, 1914, 100 L. Ed. 2d 465 (1988)

10. *Hullum by Watson v. Sullivan*, 762 F.Supp. 1324 (N.D.Ill. 1991)

11. *Prudential Insurance Company of America v. Moorhead*, 730 F.Supp. 727 (MDLA, 1989)

B. LOUISIANA CASES:

1. *Succession of Grice*, 462 So. 2d 131,

133 (La. 1985)

2. *Chatelain V. State, DOTD*, 586 So.2d 1373, 1382, n. 10 (La. 1991)

C. REFERENCES:

1. *McCormick on Evidence*, Sec. 340(B) (3d ed. 1984)

2. *Spaht, Development in the Law*, 1981-1982–Persons, 43 La. L. Rev. 535, 537 (1982)

II STATUTES:

1. Louisiana Civil Code Article 209:

A. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged living parent by preponderance of the evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.

B. A child not entitled to legitimate filiation nor filiated by the initiative of the

parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided by this article.

TABLE OF CONTENTS

I. Statement of the Case..... 1-5

II. Summary..... 6

III. Argument..... 7-25

IV. Conclusion.....26-27

STATEMENT OF THE CASE

Alana Benoit was born in 1951 in Crowley, Louisiana. She claims to have met Paul Hoffpauir for the first time 18 years later in 1969. The meeting took place in a motel room in Rayne, Louisiana. No one else was present in the room with them. Her suit was filed in 1981, two years after Paul Hoffpauir died, twelve years after she was first told that she was his daughter. Her Statement Of The Case says that "subsequent to that initial meeting, Paul Hoffpauir established a relationship with Alana visiting her home and taking her on trips to his farm in Ragley, Louisiana".

Although all of the facts of this case are

not relevant to the issue before the Court, this Court should realize that the "facts" that are contained in the Plaintiff's Statement Of The Case are actually mere allegations which have never been proven in this proceeding. Alana Sudwisher moved from Louisiana in 1971, and did not return until the mid '70's. She alleges that she had a relationship with Paul Hoffpauir over this two year period and that they saw each other frequently. This is disputed and contradicted by all of Paul Hoffpauir's family and friends who knew him. Alana claims to have visited him once after she returned to Louisiana after he had his stroke. Witnesses who were suppose to have been present when she visited him deny

that the visit took place.

The quote from the Trial Judge's reasons for ruling in which the plaintiff wants to imply that her story "may be probable" is taken out of context. The paragraph that quote comes from ends with the Judge saying:

> "Paul C. Hoffpauir, Sr. did not continuously and unequivocally recognize this plaintiff as his own child. Hoffpauir may have led a double life, withholding any knowledge of this illicit relationship and its fruit from all but the closest friends and relations of the plaintiff, but the Court is not firmly convinced of the truth of this assertion".

The Louisiana Third Circuit Court of Appeal's opinion details the facts and finds that the defendants' evidence contradicts

Alana's allegations. At one point, the Court notes that one of her strongest allegations "was effectively discredited." The Appellate Court concludes by saying:

> "the record is replete with the conflicting testimony regarding the two disputed events, Hoffpauir's affair with Joyce during the early 1950's when Alana was conceived, and Alana's relationship with Hoffpauir in the late 1960's and early 1970's. It was crucial to her case that Alana prove the existence of these two events. However, in the factual section, we have already detailed the substance of the contradictory testimony and the inconclusive evidence. We are unable to conclude that the Trial Judge's factual findings are unreasonable in light of the conflicting testimony".

It has been the defendant's position

from the beginning that the plaintiff did not prove her case by either the standard of preponderance of the evidence or the standard of clear and convincing evidence. Although, strictly speaking, that is not the issue before this Court, it would be incorrect to believe that the result of this case would be changed by lowering the standard of proof.

SUMMARY

This case does not involve any constitutional issue that this Court has not already decided and had followed by all other federal and state courts. The statute in question is less restrictive than the statute already found to be constitutional in Lalli v. Lalli, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed. 2d 503 (1978). Each of the lower courts that have addressed this argument have correctly applied well settled law in finding the statute to be constitutional. This writ application should be denied.

ARGUMENT

Alana Sudwisher has petitioned this Court for a Writ of Certiorari seeking to have Article 209 of the Louisiana Civil Code declared to be unconstitutional based on equal protection grounds. Article 209 provides:

> A. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged living parent by preponderance of the evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.
>
> B. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an

> alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided by this article.

She claims that this statute creates two classes of illegitimates and discriminates against illegitimates who file suit after the death of the alleged father by requiring an increased burden of proof. Further, her petition states that "this discrimination between the two classes of illegitimates is not substantially related to a permissible state interest." She claims that this is a denial of equal protection of the law.

First, this is not a classification based on illegitimacy. Illegitimates are not being

discriminated against vis a vis legitimates or some other category of persons that is entitled to some right or privilege that illegitimates are not. Plaintiff's reasoning is that by requiring a higher burden of proof for illegitimates who bring suit after the death of the alleged father, an unconstitutional burden is created because there is no longer any need to distinguish between two classes of illegitimates due to the dramatic change in paternity cases as a result of DNA technology.

Plaintiff made this same argument at trial, in the Court of Appeals and to the State Supreme Court. Justice Victory specifically addressed this argument in his opinion. Even the dissents were for other reasons and

therefore did not disagree with this analysis. Plaintiff is essentially saying that the following passage from Justice Victory's opinion is wrong. Justice Victory states:

> "The equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the Louisiana Constitution provide that no person shall be denied equal protection of the laws. Although classification based on illegitimacy are not "suspect" or subject to "strict scrutiny" under equal protection analysis, the scrutiny applied to them "is not a toothless one..." **Succession of Grice**, 462 So. 2d 131, 133 (La. 1985); **Trimble v. Gordon**, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977); **Mathews vs. Lucas**, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976). Such classifications are unconstitutional unless they are substantially related to

permissible state interests. **Succession of Grice**, supra; **Pickett v. Brown**, 462 U.S. 1, 103 S.Ct. 2199, 76 L.Ed.2d 372 (1983); **Lalli v. Lalli,** 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978). Thus we must determine whether the requirement that an illegitimate child prove filiation to a deceased parent by clear and convincing evidence is substantially related to permissible state interests.

Based on United States Supreme Court precedent, this Court has already concluded that "(1) the state has a substantial, permissible interest in providing for the just and orderly disposition of property at death where intestate paternal inheritance of illegitimate children is concerned, an area involving unique and difficult problems of proof, and (2) the means adopted by the state to further that interest may result in some inequity and still be constitutional, provided it is

substantially related to that interest." **Succession of Grice,** supra at 134. We further concluded that the "substantial relation requirement will not be met if the statute inevitably and unnecessarily excludes some significant categories of illegitimate children." **Id.**

Thus, the only unresolved question is whether the means adopted by the state, i.e. the imposition of the clear and convincing standard as to deceased parents, is substantially related to the permissible state interest in providing for the just and orderly disposition of property at death. In **Chatelain,** this Court discussed the imposition of the higher standard of proof where the alleged parent is deceased as follows:

The requirement of proof by a clear and convincing evidence has traditionally been applied in cases in which there is a special danger of deception or in which

the particular type of claim is disfavored on policy grounds. McCormick on Evidence, Sec. 340(B) (3d ed. 1984); **Succession of Lyons**, 452 So.2d 1161 (La. 1984).

It is logical that a higher standard of proof should be required for both filiation and legitimation when the alleged parent is dead. Claims by an illegitimate child to the property of an alleged parent or to the status of a wrongful death beneficiary of the alleged parent, when not presented until after the death of the alleged parent, are replete with danger of fraud. As stated in Spaht, Development in the Law, 1981-1982–Persons, 43 La. L. Rev. 535, 537 (1982), in regard to proof of filiation, "(a)fter the death of the alleged parent, whose knowledge concerning the fact or probability of his filiation to the child is superior, the vulnerability to fraudulent claims, is significantly increased."

Chatelain, supra at 1378. Thus,

we recognize that a higher standard of proof where the alleged parent is deceased is substantially related to the state's interest in the orderly disposition of property at death because of the danger of fraud and the inability of the opponents to present evidence which might be available to the alleged parent if he were alive. Merely because illegitimate children trying to prove filiation to a deceased parent will have to meet a higher standard than those trying to prove filiation to a living parent does not mean that the statute is unconstitutional. Illegitimates are not excluded from proving filiation, they just have a higher, hardly insurmountable, burden of proof.

Plaintiff argues that there is no longer any basis for the heightened burden of proof because with the advent of DNA testing, filiation to a living parent is much easier to prove than filiation to a deceased parent whose blood may not be

> available for DNA testing. However, the availability of DNA testing of a living parent does not mean that the requirement of a heightened burden of proof for deceased parents is not substantially related to the state's interests. As this case illustrates, complete DNA testing of all involved, especially the father, may not be available or the results may be ambiguous, thus leaving the case to be decided by the other evidence which is more susceptible of fraud and harder to rebut when the alleged father is deceased.

Even the two cases cited by Sudwisher in the petition hold against her when they are properly applied. Both cases recognize the state's interests in matters of this sort. Gordon v. Trimble, 430 U.S. 762, 97 S. Ct. 1459, 52 L.Ed. 2d 31 (1976), recognized the state's

interests but found that the statute in question did not further the state's interests. In Lalli v. Lalli, 439 U.S. 259, 99 S.Ct. 518, 58 L. Ed. 2d 503 (1978), the statute was found to further the state's interests. Many quotes can be taken directly from Lalli and are totally applicable to the case at hand. "The single requirement at issue here is an evidentiary one." at page 524. "The primary state goal underlying the challenged aspects of (Article 209) is to provide for the just and orderly disposition of property at death. We have long recognized that this is an area with which the states have an interest of considerable magnitude." at page 524. "Because of the particular problems of proof, spurious claims may be difficult to

expose." at page 526. The requirement is "designed to insure the accurate resolution of claims of paternity and to minimize the potential of disruption of estate administration. Accuracy is enhanced by placing paternity disputes in a judicial forum during the lifetime of the father. . . . The availability of the putative father should be a substantial factor contributing to the reliability of the fact finding process." at page 526. "Fraudulent assertions of paternity will be much less likely to succeed or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond, rather than first brought to light when the distribution of the assets of an estate is in the offing." at page

526. The statute upheld in Lalli is even more restrictive than the statute complained of in the current case. In Lalli, illegitimates were precluded from bringing any suit after the death of the alleged father. In the current case, suit can still be brought after the death of the alleged father, but the burden of proof is heightened in order to insure that there is protection against spurious or fraudulent claims.

A fairly recent example of this Court's approach to equal protection issues is found in Nordlinger v. Hahn, 112 S. Ct. 2326, 505 U.S. 1, 120 L.Ed. 2d 1, (1991). In that case Justice Blackmun stated

"The equal protection clause of

the clause of the Fourteenth Amendment, Section 1, commands that no state shall "deny to any person within its juridiction the equal protection of the laws." Of course, most laws differentiate in some fashion between classes of persons. The equal protection clause does not forbid classifications. It simply keeps governmental decision makers from treating differently person who are in all relevant respects alike. F. S. Royster Guano Company v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L. Ed. 989 (1920).

As a general rule" legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws may result in some inequality." McGowan v. Maryland, 366 U.S. 420, 425–426, 81 S.Ct. 1101, 1105, 6 L. Ed. 2d 393 (1961). Accordingly, this Court's cases are clear that, unless a classification warrants some form of heightened review because it

> jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the equal protection clause requires only that the classification rationally further a legitimate state interest."

Several observations should be made in response to the plaintiff's constitutional assertions. In the current case the two classifications are not in all relevant respects alike. In one instance the alleged father is there to defend himself and speak on his own behalf. In the other instance the alleged father is obviously unavailable and the defense is at a great disadvantage.

Clearly these classifications do not warrant any form of heightened review. In

Clark v. Jeter, 486 U.S. 456, 108 S.Ct. 1910, 1914, 100 L. Ed. 2d 465 (1988), this Court held that an intermediate level of scrutiny is to be applied to classifications based on illegitimacy. Therefore, in order for a classification based on illegitimacy to violate the equal protection component of the due process clause of the Fifth Amendment, the classification must be substantially related to an important governmental objective. Although, as stated earlier, this classification is not based on illegitimacy, certainly no stricter level of scrutiny than that followed in Clark v. Jeter should be used.

It would seem that Lalli is dispositive of the issues brought up in this case. Lalli has

been followed numerous times. One such recent case was Hullum by Watson v. Sullivan, 762 F.Supp. 1324 (N.D.Ill. 1991) which dealt with the argument that

> "if an illegitimate child is prevented from inheriting intestate property because paternity was not adjudicated before his father's death, that constitutes a violation of equal protection so as to render unconstitutional the state law and the act as thus applied to him. That effort on his part is scotched by decisions from the Supreme Court and our Courts of Appeals."
>
> First of all, Lalli v. Lalli, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed. 2d 503 (1978), has upheld as constitutional a New York statute that required an illegitimate child to obtain a court order of paternity during the lifetime of his father in order to inherit from his father by intestate succession.

Classifications based on illegitimacy are valid under the Fourteenth Amendment if they are "substantially related to permissible state interest" (Id at 265, 99 S.Ct. at 523). On that score, Lalli at 271, 99 S.Ct. at 526, held that providing for the just and orderly disposition of property at death was the state interest at issue, so that a requirement that the putative father be alive contributed to the reliability of the fact finding process. Although there might be cases (perhaps such as the one here) where the application of that statute would appear unfair because the child would be able to establish filial relationship without disrupting the administration of his father's assets, the Court said

"Few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results. Our inquiry under the equal protection clause does not focus on the abstract "fairness" of a state law, but on

whether the statute's relation to the state interest it is intended to promote is so tenuous that it lacks the rationality contemplated by the Fourteenth Amendment."

As a result Lalli determined that a statutory requirement that an adjudication of paternity be secured during the father's lifetime does not "inevitably disqualify an unnecessarily large number of children born out of wedlock". That was held to distinguish the statute at issue there from the Illinois statute that had been struck down in Trimble v. Gordon, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed. 2d 31 1976, a statute that allowed an illegitimate child to inherit in intestacy from his or her father only if his or her parents were later married, thus irrationally disinheriting a vast number of illegitimate children without regard to an alternative method of establishing legitimacy.

Federal Courts in Louisiana have also

recognized these same viable states interests. In Prudential Insurance Company of America v. Moorhead, 730 F.Supp. 727, (MDLA, 1989), it was decided that conditions placed on recovery of insurance proceeds from a serviceman's group life insurance policy were substantially related to important governmental objectives which provided for the uniform disposition of insurance proceeds and deterring spurious claims for equal protection purposes. The important states interests that were recognized in this case were the interest of uniformity, accurate paternity determinations, disposition of property and suppression of fraudulent claims.

CONCLUSION

The issues raised by this writ application present nothing new to this Court. Each of the three Louisiana Courts that have heard these same arguments have consistently and unanimously agreed that the statute is constitutional. There is a well established line of cases that are clearly dispositive of the fact that state's have a viable and permissible interest in the just and orderly disposition of estates. They are allowed and perhaps even encouraged to adopt measures that will protect against fraudulent claims. The statute in question does not go as far as other statutes which have already passed muster with this

Court. We would respectfully request that the writ application be denied.